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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,548	03/23/2004	Randy L. Rummel	DYCOOK.014C1	3425

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EXAMINER

BASICHAS, ALFRED

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/807,548

Applicant(s)

RUMMEL ET AL.

Examiner

Alfred Basichas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date --
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim 9 is objected to because of the following minor informalities: In the third line, the term "on" should be changed to --one--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

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were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 2, 7-9, 11, and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Resuello (D473,096), which discloses substantially all of the claimed limitations including a gas cooktop (fig. 2) comprising: four gas burners arranged in substantially a rectangular shape; a fifth gas burner centrally positioned between the four burners, with the fifth burner being substantially equal distant from each of the four burners; and a grate extending over said fifth burner for supporting a cooking utensil that enables the utensil to overlap into area partially above any of the surrounding four units, wherein each of said burners has a center, and the center of said fifth burner is located approximately at the intersection of a diagonal line between the centers two opposite corners burners of the four burners and a diagonal line between the centers of the other two of the four burners, wherein the grate extends over all of the burners and defines an upper plane at which utensils are supported, said grate being formed in three sections, and wherein said grate sections include a plurality of spaced fingers that extend inwardly above a burner to support a cooking utensil. Resuello does not specifically recite the particular arrangement of the grate, particularly the recesses and the shape of the third grate and particular dimensions of the arc made by its shape. The claimed shape and arc angle of the grates is an obvious modification based on

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design choice, and depends on spatial and esthetic considerations. In view of the absence of criticality for this particular design, it would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated it into the invention disclosed by Resuello, so as to provide for spatial considerations.

6. Claims 3, 10, 12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Resuello (D473,096), which discloses the claimed invention except for the oven positioned underneath the cooktop. Official Notice is given for the notoriously well known arrangement of an oven positioned underneath a cooktop. This arrangement is well known for its convenience and space saving characteristics. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the claimed combination into the invention disclosed by Resuello, so as to provide for space saving and convenience in use.

7. Claims 4 and 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Resuello (D473,096), which discloses the claimed invention except for the width of the cooktop being 30 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the claimed width into the invention disclosed by Resuello, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

8. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Resuello (D473,096), which discloses the claimed invention but does not specifically

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recite that the burner tops and grate tops are at substantially the same height, respectively. Official Notice is given for the notoriously well known arrangement of the burner tops and grate tops at substantially the same height, respectively. This arrangement is well known for its convenience and cost effectiveness in manufacture, as well as safety. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the claimed combination into the invention disclosed by Resuello, so as to provide for convenience and cost effectiveness in manufacture, as well as safety.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 703 306 3476. The examiner can normally be reached on Monday through Friday during regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 703 308 1935. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872 9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0861.

July 2, 2004



Alfred Basichas
Primary Examiner
703 306 3476